

In the Matter of AGWILINES, INC., IN THE OPERATION OF CLYDE MALLORY LINES; and NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, LOCAL NO. 33

Case No. R-112.—Decided November 30, 1936

Water Transportation Industry—Election Ordered: controversy concerning representation of employees—request by substantial number in appropriate unit; rival organizations; substantial doubt as to majority status—question affecting commerce: confusion and unrest among employees—*Unit Appropriate for Collective Bargaining:* community of interest; craft; established labor organizations in industry; licensed personnel; occupational differences—*Certification of Representatives.*

Mr. David A. Moscovitz for the Board.

Mr. William J. Dean, of New York City, for the Company.

Mr. E. P. Trainer, of New York City, for National Marine Engineers' Beneficial Association.

Mr. William Gallagher, of New York City, for International Union of Operating Engineers.

Mr. Bert Todd and *Captain John F. Milliken*, of New York City, for United Licensed Officers of the United States of America.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

On October 6, 1936, National Marine Engineers' Beneficial Association, Local No. 33, hereinafter referred to as M. E. B. A., filed a petition with the Acting Regional Director for the Second Region alleging that a question affecting commerce had arisen concerning the representation of the licensed marine engineers employed on the Clyde-Mallory Lines, New York, New York, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449; hereinafter referred to as the Act. On October 20, 1936, the National Labor Relations Board; hereinafter referred to as the Board, authorized the Acting Regional Director to conduct an investigation and provide for an appropriate hearing. On October 24, 1936, the Acting Regional Director issued notices of a hearing to be held in New York, New York, on November 2, 1936. Copies of the notice of hearing were duly served upon the Company, M. E. B. A., United Licensed

Officers of the United States of America and International Union of Operating Engineers, Local No. 3, the two latter organizations having been named in the petition as organizations claiming to represent licensed marine engineers employed by the Company.

Pursuant to the notice, a hearing was held in New York, New York on November 2, 1936, before Walter Wilbur, the Trial Examiner duly designated by the Board. All who were served with notice were represented at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issue was afforded all parties. Some objections to the admission of evidence were made by the representatives of the various parties. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On November 19, 1936, a stipulation was entered into by the Company and by counsel for the Board providing that ". . . the proper designation of the Company referred to as 'Clyde Mallory Lines' in the proceedings Clyde Mallory Lines and National Marine Engineers' Beneficial Association Local No. 33, . . . is 'Agwilines, Inc. in the operation of the Clyde Mallory Lines' and that the Company shall henceforth be designated in this case as Agwilines, Inc. in the operation of the Clyde Mallory Lines."

Upon the evidence adduced at the hearing and from the entire record now before it, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY

Agwilines, Inc. is a corporation duly organized and existing under the laws of the State of Maine. Clyde-Mallory Lines is a trade name under which Agwilines, Inc., as one branch of its activities, operates vessels for the transportation of freight and passengers in a coastwise service between ports on the eastern and southern coasts of the United States.¹

Sixteen vessels are regularly employed in the Clyde-Mallory Lines.² Two of these vessels³ operate from Boston to New York and return, one⁴ between New Orleans, Louisiana and Tampa, Florida, and one⁵

¹ For a more complete description of the operations of Agwilines, Inc., see *In the Matter of Agwilines, Inc., and International Longshoremen's Association, Local No. 1402*, Case No C-103, decided July 3, 1936 (*supra*, p. 1)

² These vessels are the Iroquois, Shawnee, Cherokee, Seminole, Algonquin, Henry R Mallory, Medina, Agwidale, Brazos, Alamo, Colorado, Norfolk, Oneida, Osage, Ozark and Pawnee

³ Oneida and Osage

⁴ Pawnee

⁵ Ozark.

between New Orleans and Miami and Jacksonville, Florida. The remaining 12 ships are operated on regular schedules from New York to various Atlantic and Gulf ports, including Charleston, South Carolina; Jacksonville, Miami, Key West and Tampa, Florida; New Orleans, Louisiana; and Galveston, Texas. In addition, during the winter season certain of these ships also call at the ports of Nassau, Bahama Islands and Havana, Cuba.

All of these 16 vessels are registered out of the port of New York. The two vessels plying between Florida and New Orleans come into the port of New York only very occasionally for repairs or for similar service. All of the other vessels come into the port of New York regularly. The activities and operations of all of the vessels operated under the name Clyde-Mallory Lines are directed from the office of Agwilines, Inc. in New York, New York. Branch offices called "Agencies" are maintained in Atlanta, Georgia; Birmingham, Alabama; Boston, Massachusetts; Charleston and Columbia, South Carolina; Chattanooga and Memphis, Tennessee; Chicago, Illinois; Dallas, El Paso, Fort Worth, Houston, San Antonio and Galveston, Texas; Jacksonville, Key West, Miami, Orlando, St. Petersburg and Tampa, Florida; Los Angeles and San Francisco, California; New Orleans, Louisiana; Philadelphia and Pittsburgh, Pennsylvania; Washington, District of Columbia; and Havana, Cuba.

A chief engineer, first assistant engineer, second assistant engineer and third assistant engineer are employed on each of these vessels. In addition, a fourth assistant engineer is employed on the two largest vessels.⁶

We find that Agwilines, Inc. in the operation of Clyde-Mallory Lines is engaged in transportation and commerce between the States and between the United States and foreign countries, and that the engineers employed on the vessels operated in this service are directly engaged in such transportation and commerce.

II. THE UNIONS INVOLVED

M. E. B. A. is a labor organization whose membership is confined to licensed marine engineers. United Licensed Officers of the United States of America, hereinafter referred to as U. L. O., is a labor organization whose membership includes licensed deck officers and licensed marine engineers. International Union of Operating Engineers, hereinafter referred to as I. U. O. E., is a labor organization affiliated with the American Federation of Labor. Its membership includes all engineers who operate machinery generating power.

⁶ The Iroquois and the Shawnee.

III. THE QUESTION CONCERNING REPRESENTATION.

E. P. Trainer, business manager of M. E. B. A., testified that between September 20 and 30, 1936, he informed B. O. Young, superintendent of the engineering personnel, that a majority of the engineers employed on the Clyde-Mallory Lines were members of M. E. B. A. and requested that the Company bargain collectively with M. E. B. A.; that Young requested he be given a week or two to consult with the men to determine whether they desired M. E. B. A. to represent them; that about three days later Young stated he had talked with a few of the engineers and they were overwhelmingly members of M. E. B. A. and that he would notify the proper officials of the Company of this fact and let Trainer know "how things stand"; and that about one week later Young notified Trainer that: "There is only one thing you can do, and that is go ahead with your vote and settle the question." John E. Craig, vice-president of the Company, testified that Young did not have the authority to bind the Company by such statements and that so far as the Company knew no claim had been made by any labor organization to represent these men. It is unnecessary for us to decide whether or not the actions and statements of Young constituted a refusal to bargain collectively or whether if it did the Company was bound by such a refusal, for no charge that the Company has refused to bargain collectively within the meaning of Section 8, subdivision (5) of the Act, has been filed.

M. E. B. A. submitted 30 cards⁷ signed by licensed marine engineers now employed in the Clyde-Mallory Lines service, authorizing M. E. B. A. to represent them for the purposes of collective bargaining, and a dues receipt of one other engineer similarly employed. Representatives of U. L. O. and of I. U. O. E. testified that they had members employed as engineers in this service but did not testify as to the number of their members so employed. It is apparent that at least a majority of the 66 engineers employed in this service at the present time are members of one or the other of the three labor organizations or desire one or the other of the three organizations to represent them. Craig testified that the Company does not know which labor organization the employees desire to represent them and that the Company would want to have this question determined before it would bargain collectively with any organization.

We find that a question has arisen concerning the representation of the marine engineers employed by Agwilines, Inc. in the operation of Clyde-Mallory Lines.

⁷ Thirty-two authorization cards were submitted, but two were duplications

The conflicting claims of these three labor organizations and the position taken by the Company as expressed by its representatives have created uncertainty which tends to lead to labor disputes burdening and obstructing transportation and commerce. This uncertainty can best be resolved by the holding of an election by secret ballot to determine which organization these employees desire to have represent them.

IV. THE APPROPRIATE UNIT

As previously stated, 66 engineers are now employed by the Company in the vessels operated under the name of Clyde-Mallory Lines. All of these engineers are required to be licensed.⁸ Representatives of the Company, of M. E. B. A. and of I. U. O. E. testified they believed the licensed engineers to be an appropriate unit. Representatives of U. L. O. testified that they believe the appropriate unit should include licensed deck officers as well as licensed engineers. We have considered this question in previous cases where the circumstances were the same, and came to the conclusion that the licensed engineers constitute an appropriate unit.⁹ We find that the licensed chief and assistant engineers employed by Agwilines, Inc. in the operation of Clyde-Mallory Lines constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

THE ELECTION

Since the operations of all the vessels in the Clyde-Mallory Lines are directed from the New York office of the Company, any collective bargaining done with the Company would and should include all licensed chief and assistant engineers employed in this line. However, to follow our usual procedure of posting a vessel in its home port and allowing the eligible employees who make the trip on the vessel so posted to vote on the return of the vessel to the home port would be impractical as to the two vessels plying from Boston to New York and return. This is so because a crew is hired at Boston and new ship's articles have to be signed by members of the crew for each trip to New York and return. It is therefore reasonable to assume that if the boat were posted in New York and voted on its return to New York, the engineers who vote might not in some cases be the same engineers who were on the vessel when it was

⁸ It is not clear from the record whether all or part of these engineers are required by law or required only by Company regulations to be licensed. Craig testified that all engineers employed on these vessels were licensed engineers. The number of licensed personnel required on a vessel by law depends upon the type and tonnage of the vessel.

⁹ See: *In the Matter of Panama Rail Road Company and Marine Engineers' Beneficial Association*, Case No R-108, decided October 21, 1936. (*supra*, p. 290), and cases cited therein.

posted. As to the two vessels operating between Louisiana and Florida, the engineers employed on them obviously cannot be voted in New York.

We will therefore order an election to be held under the direction and supervision of the Regional Director for the Second Region among all the licensed chief and assistant engineers employed on the Clyde-Mallory Lines. Notices of election, a sample ballot, a list of the employees eligible to vote and a notice of the time and place where balloting will be held shall be posted in New York on each of the 12 vessels which operate out of the port of New York and return, at the beginning of the next trip, if possible, after the issuance of the Direction of Election and shall remain posted until the vessel returns to the port of New York where balloting will take place at a time and place to be designated by the Regional Director for the Second Region. A similar procedure shall be followed as to the two vessels operating from Boston to New York and return, except that posting and balloting shall take place in Boston. The same procedure shall be followed as to the two vessels operating from Louisiana to Florida and return, except that posting and balloting shall take place in New Orleans, Louisiana.

Eligibility to vote will be limited to those persons who were employed as licensed chief or assistant engineers on any vessel in the Clyde-Mallory Lines service between October 6, 1936, the date of the filing of the petition in this case, and the date of the Direction of Election and who are employed as licensed chief or assistant engineers on a vessel in the Clyde-Mallory Lines service on the trip at the conclusion of which balloting takes place:

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. The licensed chief and assistant engineers employed by Agwilines, Inc. in the operation of Clyde-Mallory Lines constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.
2. A question affecting commerce has arisen concerning the representation of licensed chief and assistant engineers employed by Agwilines, Inc. in the operation of Clyde-Mallory Lines, within the meaning of Section 9 (c) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8

of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Agwilines, Inc., an election by secret ballot shall be conducted as soon as convenient, and beginning as promptly as is practical after the date of this Direction, in conformity with the rules set forth hereinabove for the conduct of the election, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the licensed chief and assistant engineers employed by Agwilines, Inc. in the operation of Clyde-Mallory Lines, to determine whether they desire to be represented by National Marine Engineers' Beneficial Association or United Licensed Officers of the United States of America or International Union of Operating Engineers.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

May 1, 1937.

On October 6, 1936, National Marine Engineers' Beneficial Association, Local No. 33, hereinafter referred to as M. E. B. A., filed a petition with the Acting Regional Director for the Second Region (New York, New York), alleging that a question affecting commerce had arisen concerning the representation of the licensed marine engineers employed on the vessels operated by Agwilines, Inc. in the operation of Clyde-Mallory Lines, New York, New York, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449. On October 20, 1936, the National Labor Relations Board, hereinafter referred to as the Board, authorized the Acting Regional Director to conduct an investigation and provide for an appropriate hearing. Pursuant to a notice duly served upon the parties, a hearing was held in New York City on November 2, 1936.

On November 30, 1936, the Board issued a Decision and Direction of Election, in which it ordered that an election be held under the supervision of the Regional Director for the Second Region among the licensed chief and assistant engineers employed by Agwilines, Inc. in the operation of Clyde-Mallory Lines to determine whether they wished to be represented by M. E. B. A. or United Licensed Officers of the United States of America, hereinafter referred to

as U. L. O., or International Union of Operating Engineers, hereinafter referred to as I. U. O. E. Pursuant to the rules set forth for the conduct of the election in the Decision and Direction of Election, balloting was conducted among the eligible employees on each vessel in the Clyde-Mallory Lines at some time within the period from March 30 to April 23, 1937.

On April 27, 1937, the Regional Director for the Second Region filed an Intermediate Report with the Board pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended, finding that the result of the balloting was as follows:

1. Total number eligible to vote.....	56
2 Total number of ballots cast.....	56
3 Total number of votes for U. L. O.....	18
4. Total number of votes for I. U. O. E.....	3
5. Total number of votes for M. E. B. A.....	29
6 Total number of blank ballots.....	3

NOW THEREFORE, by virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that National Marine Engineers' Beneficial Association has been selected by a majority of the licensed chief and assistant engineers employed by Agwilines, Inc. in the operation of Clyde-Mallory Lines, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, National Marine Engineers' Beneficial Association is the exclusive representative of the licensed chief and assistant engineers employed by Agwilines, Inc. in the operation of Clyde-Mallory Lines for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.